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## Leasehold Valuation Tribunal

**Case Reference** : **CAM/00KF/LSC/2013/0042**

**Property** : **14a Windsor Road,  
Westcliff-on-Sea,  
Essex SSo 7DF**

**Applicant** : **Vitis Freeholds Ltd.**

**Respondents** : **Katherine Jayne Easter**

**Date of Applications** : **27<sup>th</sup> September 2011**

**Type of Application** : **To determine reasonableness and  
payability of service charges and  
administration fees**

**The Tribunal** : **Bruce Edgington (lawyer chair)  
Stephen Moll FRICS  
John Francis QPM**

**Date and venue of  
hearing** : **13<sup>th</sup> June 2013  
Southend Magistrates Court, Victoria Avenue,  
Southend-on-Sea, Essex SS2 6EU**

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## DECISION

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1. The decision of the Tribunal is as follows:-

<u>Detail</u>	<u>Amount(£)</u>	<u>Decision</u>
<u>2012</u>		
Insurance	190.80	£162.18 is reasonable & payable
Management fee	200.00	reasonable & payable
Administration charges	<u>50.00</u>	reasonable & payable

Amount reasonable and payable £412.18

2. The amount claimed for interest is a contractual matter and the amount stated in the contracts i.e. the leases of 5% above Barclays Bank PLC base lending rate is reasonable.
3. The Tribunal orders that the Respondent repays to the Applicant £125 of the fee paid to the Tribunal within 14 days of the date of this decision.

4. The claim for costs pursuant to paragraph 10 of Schedule 12 to the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") is refused.
5. The Tribunal has no jurisdiction to adjudicate in respect of ground rent.

### **Reasons**

#### **Introduction**

6. On the 17<sup>th</sup> September 2012, the Applicant acquired the freehold of the building in which the properties are situated and thus assumed responsibility for the building as set out in the long lease subject to the Respondent complying with her obligations as to payment of ground rent, service charges and administration charges. Its interest was registered with the Land Registry on the 10<sup>th</sup> October 2012.
7. Buildings insurance was arranged by the Applicant's managing agent, Ferris Management Ltd. ("Ferris"), through Willis Ltd., a well known insurance broker, with Zurich Insurance PLC as from the 17<sup>th</sup> September 2012 at a premium of £381.60 for the building. The Applicant, Vitis Freeholds Ltd., received a commission of 15% of the premium. The statement of Polly Plant in the bundle explains that one of the flats is let out and the property is old which means that claims are more likely. Thus, she argues, a 15% commission to cover such potential for claims is reasonable.
8. On the 1<sup>st</sup> November 2012, Ferris wrote to the Respondent enclosing a notice of assignment and a demand for the insurance premium. On the 10<sup>th</sup> December, they wrote again and said "*we are also entitled to charge you £25 administration fee for each letter sent to you reminding you of the arrears*". As a matter of fact, there is no such 'entitlement' and the terms of this letter are therefore wrong and verging on sharp practice. A demand is made for the first £25 charge.
9. By the same post, a demand is sent for the payment of management fees in the sum of £200 for the year commencing 25<sup>th</sup> December 2012.
10. As far as the Respondent is concerned, she was ordered to file and serve a statement in reply to the application. She has not done so.

#### **The Inspection**

11. The members of the Tribunal inspected the property in the presence of Polly Plant from the Applicant's managing agent. It was a fairly chilly dull morning. The property is a first floor flat in a semi-detached converted house of rendered brick construction under a tiled roof. It has double glazed uPVC windows. The year 1896 is on the front of the building which would be consistent with its year of construction.
12. The property is within walking distance of a reasonable shopping area in Westcliff-on-Sea and, of particular relevance, is within walking distance of the railway station providing a main line into the centre of London.
13. There appeared to be no-one in occupation of the flat and a notice had been fixed

to the front door saying that GE Home Lending were intending to take possession.

### **The Lease**

14. The Tribunal was shown a copy of the original counterpart lease which is for 99 years from 25<sup>th</sup> December 1986 at increasing ground rents. There are the usual covenants on the part of the landlord to maintain the structure of the property and insure it. Also for the lessee to pay half of service charges incurred. There are provisions to claim monies on account.
15. There are also the usual provisions enabling the landlord to recover costs incurred 'for the purpose of or incidental to the preparation and service of' a notice of intended forfeiture under Section 146 of the **Law of Property Act 1925**. Finally, in clause 3(2) and the 3<sup>rd</sup> Schedule, the landlord is entitled to claim "*all other expenses (if any) including professional fees incurred by the Landlord in and about the maintenance and proper and convenient management and running of the building*".
16. The landlord is also entitled to claim interest on any monies payable under the terms of the leases when they are unpaid for 21 days at the rate of 5% above Barclays Bank PLC's base lending rate. Whilst such rates do not specifically exist, the base rate is .5% and therefore the claim in this case for 5.5% appears to be in accordance with the terms of the leases.

### **The Law**

17. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
18. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
19. Section 27A(4)(c) of the 1985 Act says that no application can be made to a Tribunal to consider the reasonableness of service charges "*...in respect of a matter which...has been the subject of a determination by the court*".
20. Schedule 12, paragraph 10, of the 2002 Act gives the Tribunal the power to order the payment of costs wasted by one party where the Tribunal has determined that another party has behaved "*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*".

### **The Hearing**

21. The hearing was attended by Ms. Plant. She confirmed that the Applicant has not made any decision to forfeit the lease. In support of her claim for the payment of costs pursuant to Schedule 12 of the 2002 Act she said that the Respondent had behaved unreasonably in failing to reply to correspondence, in moving out for the property without telling the Applicant and in making it necessary for this application to be made.

## Conclusions

22. As far as the administration fees are concerned, the 2<sup>nd</sup> edition of the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors provides, in effect, standard terms of engagement for managing agents. Part 2 deals with managing agents charges and confirms that charging a fixed fee per unit per year is the approved way of charging. £200 per annum per unit is in the middle of the range of charges one would expect to pay for managing a small property such as this with only 2 units of accommodation.
23. Within that fixed fee the agent would be expected to collect service charges from the tenants. The suggested menu of additional charges does not include writing chasing letters. Having said that, the Tribunal's knowledge and experience is that after about 2 methods of communication i.e. a letter and a telephone call or 2 letters, the practice has grown up over the years of additional charges being levied. There is no fixed fee but, depending on the circumstances, £25 for a letter would not be unreasonable.
24. In this case, the landlord's managing agents have written several letters to the tenant and her mortgagee. Indeed, there was some criticism from Ms. Plant at the hearing because GE Home Lending had not informed her of any possession action proposed. The Tribunal concludes that, in this particular case, £50 is a reasonable administration charge to make.
25. As far as the insurance premium is concerned, the case of **Akorita v Marina Heights (St. Leonards) Ltd** [2011] UKUT 255 (LC) is relevant. His Honour Judge Huskinson decided, in that case, that service charge accounts certified by an accountant were insufficient and not payable when the lease said that they should be certified by a surveyor. He went on to say that if that point had not succeeded then not all of the insurance premium would have been payable in any event.
26. The reason was that from the premium, a commission had been paid to the insurance broker and a commission had been paid to the managing agent. The former was not contested but the latter was. It was determined that a commission paid to the managing agent was not payable because that cost had been incurred not in insuring the building but in paying the commission. The same principle applies in this case. Any landlord may have to face insurance claims and any cost or time taken in passing them to insurers is just part of the role of being a landlord. It does not mean that such landlord is entitled to receive some of the premium to cover any administration costs which may arise.
27. Thus the insurance premium found to be reasonable and payable in this case is the amount claimed less 15% i.e. £162.18.
28. Turning now to the question of the fees paid to the Tribunal, the Respondent has clearly had no defence to the claim and has made this application necessary. The Tribunal agrees that she should refund the fees paid for this application of £125.00.
29. Finally, the claim for costs is not made out. The Respondent has done nothing

within these proceedings which means that she cannot have behaved as suggested “*in connection with*” these proceedings. Furthermore, the claim for costs is calculated at the hourly rate of £100 for Ms. Plant i.e. they are managing agent’s costs. There is no justification put forward as to how that hourly rate is calculated and it is therefore doubtful that anything would have actually been allowed anyway.

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**Bruce Edgington**  
**President**  
**17<sup>th</sup> June 2013**

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